

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3417(b), Mexican Fruit Fly Interior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3417 is to provide for the State to regulate the movement and possible carriers of Mexican fruit fly from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3417(b) is necessary is as follows:

Mexican fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Many kinds of fruit, including apple, apricot, avocado, citrus (except lemon and sour lime), guava, nectarine, peach, pear, plum, and pomegranate, and the fruiting bodies of some wild and ornamental plants are known to be hosts or possible hosts of the Mexican fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

Larvae of the Mexican fruit fly have recently been detected at three separate locations and adult Mexican fruit flies,

including mated females, have been detected at numerous locations on properties in the Valley Center area of the County of San Diego. The detection of larvae or a mated female adult Mexican fruit fly is indicative of an incipient infestation. On November 21, 2002, three male and four female (one mated) Mexican fruit flies were taken from traps on Property A in the Valley Center area of San Diego County. On November 21, 2002, 75 Mexican fruit fly larvae were recovered from grapefruit produced in an orchard on Property A in the Valley Center area of San Diego County. On November 22, 2002, 18 female (four mated) and five male adult Mexican fruit flies were taken from traps on Property A in the Valley Center area of San Diego County. On November 23, 2002, one male and two female adult Mexican fruit flies were taken from traps located in the Valley Center area of San Diego County. The female Mexican fruit fly trapped on Property B was mated. On November 23, 2002, seven larvae were recovered from grapefruit located at Property C in the Valley Center area of San Diego County. On November 25, 2002, one male adult Mexican fruit fly was taken from a trap in the Valley Center area of San Diego County. On November 26, 2002, two female (one mated) adult Mexican fruit flies were taken from traps located on Property D in the Valley Center area of San Diego County. On November 27, 2002, a male adult Mexican fruit fly was taken from a trap in the Valley Center area of San Diego County. On November 29, 2002, four male and four female adult Mexican fruit flies were taken from traps in the Valley Center area of San Diego County. Two of the female flies located on Property E were mated. Each of the female flies located on Property F and Property G were mated. On December 1, 2002, Mexican fruit fly larvae were recovered from grapefruit located at Property H in the Valley Center area of San Diego County. The detection of multiple Mexican fruit fly larvae and mated females at Properties A through H form a core area that runs approximately six miles from north to south and four miles from east to west between these known infested properties. The detection of numerous adult Mexican fruit flies, including mated females and larvae at three separate properties is indicative of an incipient infestation of Mexican fruit fly in the Valley Center area of San Diego County.

The quarantine area includes the Properties A through H as epicenters and a buffer zone extending approximately 4-1/2 miles in each direction from these epicenters. A buffer zone is necessary because the fly can spread naturally (as well as artificially in infested hosts). The boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Agriculture, and the San Diego County Agricultural Commissioner and is considered the minimum area around the infested properties that should be regulated to

prevent artificial spread of Mexican fruit fly to noninfested areas. Every effort has been made to ensure the quarantine boundary line followed easily identifiable markers such as highways, roads, county boundary lines, national park boundary lines, etc. Where this was not possible, the use of an imaginary line drawn between identifiable points has been used. The use of an imaginary line that splits regulated businesses, properties, production groves, etc., is highly undesirable as it may lack clarity in what is or is not regulated.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact quarantine against California products which can host and carry the fly. It is estimated that the establishment of Mexican fruit fly could cost an additional \$124 million per year in increased production costs. Mexican fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has always been successfully eradicated.

The emergency amendment of Section 3417(b) established approximately 117 square miles surrounding the infestation in the Valley Center area of San Diego County as the area under quarantine for Mexican fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to amend this regulation to establish a new quarantine area in the Valley Center area of San Diego County as an emergency action.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3417 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Agricultural Commissioner of San Diego County requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs

or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The statewide cost impact of the changes in the regulations on private persons or businesses is not expected to be significantly adverse. The cost impacts on some private persons or businesses may be significantly adverse if they are producing host commodities within the regulated area.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

Within the quarantine area, the Department has identified 23 fruit sellers/vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

The Department has identified approximately 374 conventional growers within the quarantine area. Host fruit from growers outside the core area (a one mile area surrounding the infested sites) must be treated with malathion bait spray before it can be moved. Spray costs are approximately \$25 per acre with 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense. Growers located within the core area only have the quarantine treatment options of cold treatment, fumigation or processing for host material. Host material produced in the core area is considered to be a higher risk due to its proximity to the known infested sites. Fumigation costs are approximately \$0.015 per pound of product. The costs for cold treatment are unknown at

this time.

The Department has identified approximately 22 organic growers with host commodities. Ground spray costs are approximately \$10 per acre with 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense. Growers located within the core area only have the quarantine treatment options of cold treatment or processing for host material. Host material produced in the core area is considered to be a higher risk due to its proximity to the known infested sites. The costs for cold treatment are unknown at this time.

The Department has identified approximately 48 fruit haulers, 41 harvesters, 32 packers and three processors and it is estimated that the additional costs for each of these businesses may be approximately \$200. Businesses transporting or receiving host produce must maintain the quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities in refrigerated coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive.

There are 67 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs.

The Department has identified approximately three farmers' markets/swap meets in the area under quarantine. Businesses selling host produce at these locations must maintain the quarantine commodities in a manner that precludes exposure to Mexican fruit fly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would

represent a significant economic impact.

No business has gone out of business due to the quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from Mexican fruit fly expenditures by State and Federal governments.

Based on the above information, it was determined that the amendment of Section 3417(b) will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are low and, for the most part, a number of optional ways to comply are available to businesses so they may select the means with the lowest cost and easiest implementation for them. For many businesses, no additional costs were incurred.

Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3417(b):

“Annual Estimated Economic Impact – Valley Center Area, San Diego County, Mexican Fruit Fly Interior Quarantine,” California Department of Food and Agriculture, Plant Health and Pest Prevention

Services, Permits and Regulations, December 31, 2002.

“Establishments Affected by the Mexican Fruit Fly Interior Quarantine, Valley Center Area, San Diego County,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, December 31, 2002.

“Annual Fruit Fly Quarantine Cost Basis,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, December 31, 2002.

“Cumulative Regulatory Report for 12/29/02,” Cooperative Mexican Fruit Fly Project, Valley Center, San Diego.

December 30, 2002 fax to Steve Brown from John Blasius, no subject, 23 pages.

Letter of November 21, 2002 to The Honorable William Lyons Jr. from Kathleen A. Thuner.

Pest and Damage Records #1123990 (December 1, 2002); #P194486 (November 29, 2002); #P194485 (November 29, 2002); #P194484 (November 29, 2002); #P194483 (November 29, 2002); #016173 (November 29, 2002); #P085385 (November 27, 2002); #P101957 (November 26, 2002); #P101956 (November 26, 2002); #027749 (November 25, 2002); #1135839 (November 23, 2002); #1096651 (November 23, 2002); #027317 (November 23, 2002); #P194511 (November 23, 2002); #P135851 (November 22, 2002); #P135633 (November 22, 2002); #P135632 (November 22, 2002); #P135631 (November 22, 2002); #P135630 (November 22, 2002); #P135629 (November 22, 2002); #P135627 (November 22, 2002); #1109775 (November 21, 2002); and #11355838, California Department of Food and Agriculture.